M

Home (1953) Department.

Rt. SERIES.

G.O. No. 2511.

Dated 18-7-1953.

FOR MYSORE STATE

[Despatch Abstract.]

CRIMINAL JUSTICE - Appeal against acquittal C.C.No. 1656 of 1952 on the file of the Additional First Class Magistrate (Prohibition) Application - Declined.

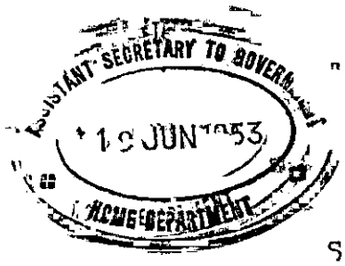
Rc.C.2.4644/52(2) S. Kanara Dt.Magistrate's Office,
Mangalore dated 14.6.53.

From

Sri A.Ma aligam Chettiar, B.A.,
Dt.Magistrate, South Kanara.

To

The Secretary to Government,
Home Department,
Fort St.George, Madras 9.



Sir,

Criminal Justice - South Kanara District - C.C.1656/52 on the file of the Additional I Class Magistrate (Prohibition) South Kanara - Acquittal of the accused - Appeal against acquittal - Proposals submitted.

*****

128240
19/6/53

One Juliana Crasta Bai and her two sons Loutis and Louise were charged before the Addl. I Class Magistrate (Prohibition) South Kanara under Section 4(1)(b) of the Madras Prohibition Act in C.C.1656/52. Juliana Crasta Bai(A1) was charged under Sec.4(1)(b) read with Sec.4(1)(k) of the said Act for permitting A2 (Loutis) and A3(Louise) to manufacture arrack in the house which was in her immediate possession. The A.P.C.M.(Prohibition) South Kanara before whom the case was filed acquitted all the 3 accused, on the grounds mentioned in his judgement, in C.C.1656/52 dated 29.4.1953.

The Public Prosecutor, South Kanara to whom the matter was referred to for opinion has stated that the acquittal of the accused is wrong, and that the case should be taken on appeal to the High Court. He has also furnished the grounds of appeal. I agree with the opinion of the Public Prosecutor and recommend that the Government may be pleased to direct the Public Prosecutor, Madras to file an appeal against the acquittal in the case.

(V)
pp3-4 infra

I enclose copies of the calendar and judgment in C.C.1656/52 dated 29.4.53 in duplicate and the grounds of appeal against the acquittal (in duplicate) furnished by the Public Prosecutor, South Kanara.

Yours faithfully,

For Dt.Magistrate. 15/6

AM/15-6-53.

15/6

C.C.1656/52 A.F.C.M. Prohibition Mangalore.

Grounds of appeal against acquittal furnished by the Public Prosecutor, South Kanara.

******

1. The learned A.F.C.M. has erred in drawing inferences which are not based on facts in the case, and the acquittal of the accused is against the weight of evidence and not justified either on facts or on the natural inferences that follow from them.

2. The learned A.F.C.M. fails to see that even the accused have not denied that a livestill was found in the house of A.1.

3. The A.F.C.M. has altogether lost sight of the very important fact that all the three accused have made admitting statements Exhibits P(2)(3) and (4) wherein the accused in very clear terms have admitted that A2 was distilling, A3 was assisting him and A1, who is their mother, the owner of the house, was in the house.

4. The A.F.C.M. has based the acquittal on totally erroneous reasoning. The A.F.C.M. seems to think that the Petty Officer in the case P.W.1 should have taken witnesses with him when he went to the house of A1, because he was going there on information. It is not possible to secure witnesses, when the Prohibition Party rushes to surround houses, and whenever attempts are made to secure witnesses the very purpose of the raid is defeated, the delinquents getting wind of the coming events. In any case, the A.F.C.M. was not justified in drawing inference adverse to prosecution from the fact that the Petty Officer did not attempt to take search witnesses along with him. The inference drawn by the A.F.C.M. is against the spirit of section 103 of the Criminal Prosecudure Code. The search in this case has been conducted regularly and properly as per section 103 of the Criminal Procedure code.

5. The learned A.F.C.M. has attached much importance to the fact that the informants in the case met the Petty Officer by chance and has sought to draw an adverse inference to the Prosecution from that. The A.F.C.M. is not justified in that as it is a matter of no consequence as to where the informant meets the Petty Officer.

6. The A.F.C.M. seems to think that there should have been much more than ½ a dram of arrack in the receiver according to the facts of the case. The A.F.C.M. is only surmising and drawing upon his own imagination when he says that there should have been more arrack in the receiver as there is absolutely no grounds for him to come to this conclusion.

The A.F.C.M. has further gone wrong in thinking that more incriminating properties should have been found in the house of the accused if distillation was going on there and he refers to the receptacle, that contained the wash before it was put on the still. The A.F.C.M. forgets that there is every possibility that the same vessel in which the wash was prepared might have been used for boiling the wash and he is not justified in entertaining any doubts regarding the Prosecution case from this fact.

The discrepancies relied on by the A.F.C.M. are of the most trivial nature and absolutely no weight should have been attached to them in assessing the evidence in this case.

6

The evidence of P.Ws. 1 and 2, who are disinterested witnesses, which is supported by the finding of the different parts of a ~~lin~~ gun in the house of A1, conclusively proves the prosecution case against A1. The prosecution case is established and proved beyond any shadow of a doubt against all the 3 accused by their unsigned statements, made before the Sub Inspector of Prohibition, a day after the offence, after they had been enlarged on bail. Under these circumstances, the Addl.First Class Magistrate should have found all the three accused guilty and committed them of the offences with which they stood charged.

25th May. 1953.

/True copy/

For Dt.Magistrate.

15/6.

15/6.

[128240 Cis IV/53]

Home Department (Cis IV)

Issue Memo No. 128240 Cis IV/53 Dated 25/6/53

Criminal justice - Appeal against acquittal - C.C. No 1656 of 1952 on the file of the A.F.C.M., (Prohibition), South Kanara - Application.

Ref: From the D.M., South Kanara No C3-4644/53(2) dated 14-6-1953.

Referred to the P.P., Madras for remarks.

25-6-1953

25-6-53

25/6/53

To

The P.P., Madras

(With copy of Memo, para 3 of which is to be dealt with in the reply)

30/6/53

[illegible]

6

Problem: The date of judgment is 29.4.1953. Hence Art 116(a) of (V)
Three months time expires on 28.7.1953.
Six months time expires on 28.10.1953

4/CSR
25.6.1953

25.6.53

25/6/53

Sri V.T.Rangaswami Ayyangar,
B.A.,B.L.,
Public Prosecutor,
Madras.

To
The Secretary to Government,
Home Department,
Madras.

Opinion No. 155 of 1953, Dated 2nd July 1953.

Sir,

Sub: CRIMINAL JUSTICE - Appeal against acquittal C.C.No. 1656 of 1952 on the file of the Assistant First Class Magistrate (Prohibition), South Kanara - Forwarding Opinion.

With reference to Memorandum No. 128240/Courts.IV/53-1, Home, dated the 25th June, 1953, I have the honour to give below my opinion in the above matter.

2. The enclosures received for reference are herewith returned.

-- --

Judgment at (V)

137442
3.7.53

OPINION.

In the trial for the offence under the Prohibition Act the learned Magistrate while he was not prepared to accept the evidence of the defence nevertheless considered the prosecution evidence was not fully corroborative of the actual recovery

p.t.o.

8

To

The Secretary to Government,
Home Department,
Madras.

Sri V.T. Rangaswami Ayyangar,
B.A., B.L.,
Public Prosecutor,
Madras.

-2-

stage of the search and felt as to whether the prosecution evidence was enough to bring the guilt home to the accused beyond all reasonable doubt. He felt that the evidence was not sufficient and the matter is one entirely resting upon the appreciation of the evidence. Under those circumstance in my opinion the appeal against acquittal is not likely to be successful.

5. The enclosures received for reference are returned herewith.

V.T. Rangaswami Ayyangar

Public Prosecutor.

--

OPINION.

In the II for the offence under the Prohibition

the evidence of the defence nevertheless considered the prosecution evidence was not fully corroborative of the actual recovery

the learned Magistrate while he was not prepared to accept

P.T.O.

[12821.ccksIV/53 G.O.Rt.No. 2511. Dated: 18.7.53

Issue

HOME DEPARTMENT.

CRIMINAL JUSTICE - Appeal against acquittal - C.C.No. 1656 of 1952 on the file of the Addl First Class Magistrate (Prohibition), S. Kanara - Application - Declined.

Read:- From the D.M., South Kanara Dc C3.4644/53(2) dated 14.6.53.

From the P.P., Madras, Opn. No. 155 of 1953 dt 2.7.1953.

***

ORDER:

The Government do not consider it advisable to appeal to the High Court against the acquittal by the Additional First Class Magistrate (Prohbn.) S. Kanara of the accused in C.C.No. 1656 of 1952 on his file.

2. A copy of the opinion of the Public Prosecutor, Madras is forwarded to the D.M., South Kanara for information.

To the D.M., South Kanara.
(with copy of pp 7-8 Cf and (V) in original by Regd Post)
Copy to the P.P., Madras.

NOTE:- The draft order above is in accordance with the opinion of the P.P., Madras at pp 7-8 Cf.

If the Government differ from the Public Prosecutor, Madras and propose to prefer an appeal, the Advocate General should ordinarily be consulted before orders preferring an appeal are issued.

The date of judgment is	29.4.1953
3 months time expires on	28.7.1953
6 months time expires on	28.10.1953

FIRST ASST. SECRETARY TO GOVERNMENT 18 JUL 1953 DEVELOPMENT DEPARTMENT

FIRST ASST. SECRETARY TO GOVERNMENT 17 JUL 1953 (a) of (V) DEVELOPMENT DEPARTMENT

2/

cls IV

Dev. (S. II) Dept.

~~Home Dept~~ the draft order and note at pi above may be perused and the file returned to me 86 113/53

Home Dept.

80/ 8/7/53 Amd 14/7/53

15-7-53 Hoscie

Dev. n.o.w. 86 113 S.II.53.1 15.7.53

Home Dept

Isone

WB

15.7.53

Dev. (S.II) Dept

90050 17.7.53

Missent. May be returned to Hom

80/ 17/7/53 Amd 17/7/53

17-7-53 Hoscie

Dev. n.o.w. 90050 S.II/53.1 18.7.53